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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,591	08/15/2001	Matti Sallberg	TRIPEP.028AUS	3174
20995	7590	06/03/2004	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			LI, BAO Q	
			ART UNIT	PAPER NUMBER
			1648	

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/930,591

Applicant(s)

SALLBERG, MATTI

Examiner

Bao Qun Li

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-32 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-32 are pending.

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-7, 10, 11, 27-28 and 31, drawn to an isolated nucleic acid or fragment of nucleic acid of SEQ ID NO: 1, and a vector or cell comprising the same classified in class 536, subclass 23.72.
 - II. Claims 8-9 and 32, drawn to a purified nucleic acid sequence encoding a peptide, classified in class 536, subclass 23.7.
 - III. Claims 12-22, 29-30, drawn to an isolated peptide, classified in class 530, subclass 300.
 - IV. Claims 23-24, drawn to a method of identifying HCV by using a nucleic acid hybridization assay, classified in class 435, subclass 6.
 - V. Claim 25, drawn to a method of identifying a presence of HCV by using an antibody, classified in class 435, subclass 7.1.
 - VI. Claim 26, drawn to a method of identifying a presence of HCV by using a peptide, classified in class 435, subclass 5.

If any one of group II to VI is elected, a further restriction/election to one of the following nucleic acid sequence is required under 35 U.S.C. 121

- i). A nucleic acid sequence encoding a polypeptide of SEQ ID NO: 2;
- ii). A nucleic acid sequence encoding a polypeptide of SEQ ID NO: 3,
- iii). A nucleic acid sequence encoding a polypeptide of SEQ ID NO: 4,
- iv). A nucleic acid sequence encoding a polypeptide of SEQ ID NO: 5,
- v). A nucleic acid sequence encoding a polypeptide of SEQ ID NO: 6,
- vi). A nucleic acid sequence encoding a polypeptide of SEQ ID NO: 7,
- vii). A nucleic acid sequence encoding a polypeptide of SEQ ID NO: 8,
- viii). A nucleic acid sequence encoding a polypeptide of SEQ ID NO: 9,
- ix). A nucleic acid sequence encoding a polypeptide of SEQ ID NO: 10,
- x). A nucleic acid sequence encoding a polypeptide of SEQ ID NO: 11.

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If any one of group i) to x) is elected, Applicants are required to elect one or more nucleic acid sequence fragment associated with elected nucleic acid of the following nucleic acid sequence 35 U.S.C. 121

- 1). A nucleic acid sequence encoding a polypeptide of SEQ ID NO: 14,
- 2). A nucleic acid sequence encoding a polypeptide of SEQ ID NO: 15,
- 3). A nucleic acid sequence encoding a polypeptide of SEQ ID NO: 16,
- 4). A nucleic acid sequence encoding a polypeptide of SEQ ID NO: 17,
- 5). A nucleic acid sequence encoding a polypeptide of SEQ ID NO: 18,
- 6). A nucleic acid sequence encoding a polypeptide of SEQ ID NO: 19,
- 7). A nucleic acid sequence encoding a polypeptide of EQ ID NO: 20,
- 8). A nucleic acid sequence encoding a polypeptide of SEQ ID NO: 21,
- 9). A nucleic acid sequence encoding a polypeptide of SEQ ID NO: 22,
- 10). A nucleic acid sequence encoding a polypeptide of SEQ ID NO: 23,
- 11). A nucleic acid sequence encoding a polypeptide of SEQ ID NO: 24,
- 12). A nucleic acid sequence encoding a polypeptide of SEQ ID NO: 25,
- 13). A nucleic acid sequence encoding a polypeptide of SEQ ID NO: 26.

The inventions are distinct, each from the other because of the following reasons:

Inventions i) to x) are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are directed to structurally or functionally different molecules, e.g. the nucleic acid molecule of group i) encoding a peptide consisting of SEQ ID NO: 2, whereas the nucleic acid molecule of group vi) encodes an peptide having a sequence of SEQ ID NO: 7.

Inventions 1) to 13) are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are directed to structurally or functionally different molecules, e.g. the nucleic acid molecule of group 1) encoding a peptide consisting of SEQ ID NO: 14, whereas the nucleic acid molecule of group 7) encodes an peptide having a sequence of SEQ ID NO: 20.

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Inventions I) to III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are directed to structurally or functionally different molecules, e.g. the isolated molecule of group I) is a nucleic acid of SEQ ID NO: 1, whereas the isolated molecule of group III) is a peptide.

Inventions IV to VI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are directed to functionally different methods that have different steps and using different detecting agent to detect HCV. They work in different modes.

Inventions I and IV are related as process of using and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be practiced with materially different product or (2) that the product as claimed can be practiced by another and materially different process (MPEP § 806.05(f)). In the instant case, the product as claimed can be made by another and materially different process such as producing a polypeptide rather than diagnosis.

Because these inventions are distinct for the reasons given above and have acquired a separate and different literature and sequence searches. For example, the search of group I) of SEQ ID NO: 2 does not need to search of group vi) of SEQ ID NO: 7. The restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

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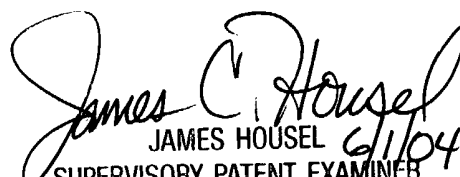
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bao Qun Li whose telephone number is 571-272-0904. The examiner can normally be reached on 7:00 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 571-272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Bao Qun Li

May 26, 2004


JAMES HOUSEL 6/1/04
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600